

REMARKS/ARGUMENTS

Responsive to the Office Action dated May 15, 2006, favorable reconsideration of the present application based upon the above-noted amendments to the claims and the following discussion, is respectfully requested.

The drawings have been objected to under 37 C.F.R. § 1.83(a); Claims 9-16 have been provisionally rejected on the grounds of non-statutory obviousness-type double patenting; Claims 9 and 11-15 have been rejected under 35 U.S.C. § 102 as being anticipated by Jones; Claim 10 has been rejected under 35 U.S.C. § 103 as being unpatentable over Jones; and Claim 16 has been rejected under 35 U.S.C. § 103 as being unpatentable over Jones in view of Boesen. Claim 11 has been canceled, without prejudice, and thus, Claims 9, 10 and 12-16 remain active.

Considering first then the Examiner's objection to the drawings, it is to be noted that the first shank is shank 21 while the second shank is shank 34 as illustrated in Figure 1 and as discussed at page 5, line 22 through page 6, line 9.

Considering next then the rejection of Claims 9-16 as being provisionally rejected on the grounds of non-statutory obviousness-type double patenting, it is respectfully submitted that the claims as now amended no longer merit this rejection insofar as the claims are no longer readable on the claims referred to by the Examiner in the co-pending applications.

Considering next then the rejection of Claims 9 and 11-15 under 35 U.S.C. § 102 as being anticipated by Jones, it is to be noted that Claims 9 and 12 have now been amended so as to claim an elongated shank adapted to follow an outer contour of patient's cavum conchae, the shank being substantially arc shaped and to further claim that the broadened portion disposed on the angled transverse segment includes an auditory canal tab configured to be disposed only in an upper region of the patient's auditory canal. Insofar as the spring

11 of Jones cited as teaching a shank does not have the structure and functioning as mentioned above with regard to Claim 9 and insofar as Claim 12 contains similar limitations, it is submitted that both Claims 9 and 12 patentably define over Jones. In this regard, it is specifically noted that both Claims 9 and 12 claim that the broadened portion of the shank includes an auditory canal configured to be “disposed only in the upper region of the patient’s auditory canal”. To the contrary, the spring 11 does not meet this limitation and the receiver 20 completely fills the patient’s auditory canal in Jones and thus clearly does not provide for a broadened portion of a shank which is configured to be disposed only in the upper region of the patient’s auditory canal. As emphasized in the present application, this limitation is important so that the earpiece covers the auditory canal 26 only slightly, so that the natural auditory canal/external ear resonance is maintained (see page 6, third paragraph).

In view of the foregoing, it is submitted that each of Claims 9 and 12 as well as the claims dependent therefrom patentably define over Jones.

Considering next then the rejection of Claim 10 as being obvious over Jones and the rejection of Claim 16 as being unpatentable over Jones in view of Boesen, it is respectfully submitted that Boesen fails to rectify the deficiencies noted hereinabove with regard to Jones. It is further submitted that due to the different structure and functioning of both Boesen which is directed to a bone conduction voice transmitting apparatus and system, such would not be obviously combinable with the spring 11 of Jones which does not rely upon bone conduction voice transmission. Moreover, there is no teaching in either Jones or Boesen of any motivation to combine the adjustable earpiece for audiophones of the type shown in Jones with the bone conduction voice transmission apparatus and system disclosed in Boesen. Insofar as motivation of this type is necessary to support an obviousness-type rejection based upon the combining of two references, it is submitted that Claim 16 as well as the remaining

Application No. 10/790,126
Reply to Office Action of May 15, 2006

claims in the present application patentably define over the prior art of record and thus merit indication of allowability with the same being hereby respectfully requested.

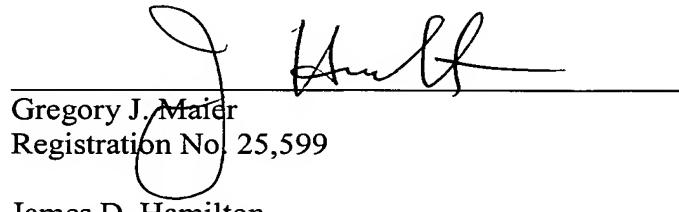
Respectfully submitted,

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